

Prison Reform Trust response to the Justice Committee Inquiry Joint Enterprise - September 2011

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. We welcome the opportunity to make a submission to the Committee.

Summary:

The Prison Reform Trust welcomes the Justice Committee's decision to hold a brief inquiry into the use of Joint Enterprise in England and Wales and is pleased to be able to respond. The Prison Reform Trust is concerned that the doctrine of joint enterprise is being used in a way in which it was never envisaged. In line with the Law Commission, legal practitioners and others, we would welcome an urgent review of the legislation and its application in the courts.

1. Statistics on the use of joint enterprise as a legal doctrine are not collected centrally. Neither is information relating to the number of convictions secured using joint enterprise which are subsequently appealed, whether successfully or not. This lack of transparency is a matter of concern.
2. The Prison Reform Trust is concerned that joint enterprise may be used disproportionately in cases involving children and young adults and can act as a drag-net, bringing individuals and groups into the criminal justice system who do not necessarily need to be there. Our visits to young offender institutions have produced anecdotal evidence that this is the case.
3. In its Eleventh Programme of Law Reform submitted to Parliament earlier this year, the Law Commission cited the number of appeals to joint enterprise murder cases as evidence that "*experienced practitioners are finding the existing law very difficult to apply*". It is worrying that the most experienced legal experts appear to find the doctrine of legal enterprise complex, given that many children and young people charged under joint enterprise will not have access to expert legal representation and will not have their cases heard by high court judges but rather members of the magistracy who are volunteers. We support the Law Commission in its conclusion

that “*legislative reform is therefore needed*”¹ and call on the Government to institute an urgent review of the application of joint enterprise legislation.

4. We are further concerned that individuals charged under joint enterprise spend extended periods in custody on remand due to the legal complexities of cases involving large numbers of co-defendants and that inadequate information is made available to defendants and their families as to the law under which they have been charged.
5. Research conducted by the Nuffield Foundation on sentencing in murder cases suggests that public opinion does not support murder convictions for individuals who fail to intervene².
6. It is a matter of concern that joint enterprise may have been resurrected by the police and Crown Prosecution Service as a tool to tackle gang membership and group violence without necessarily having evidence to show that this approach is effective. Addressing the reasons why young people join gangs, better understanding the links between victimisation and offending, providing safe exit routes for young gang members wishing to leave, and improving relations between young people and the police are examples of the ways in which youth violence and group disorder might better be tackled.
7. At the very least, questions need to be raised about the severity of sentencing for those on the edges of a serious crime compared to those most culpable. The lack of precision and clarity, fairness and proportionality of this doctrine indicate the need for a proper review.
8. In addition to the Inquiry terms of reference already set out, we would ask the Committee to consider the following additional questions:
 - Are children and young people disproportionately affected by joint enterprise?
 - Does being charged under joint enterprise lead to extended periods of remand in custody?
 - Is information provided to defendants and their families in regard to this penalty?
 - Is the use, and impact, of joint enterprise being monitored? If so, by whom?
 - Will the Sentencing Council be considering a guideline on the use of joint enterprise in the future?

¹ http://www.justice.gov.uk/lawcommission/docs/lc330_eleventh_programme.pdf

² <http://www.nuffieldfoundation.org/sentencing-murder-cases>

The following examples of joint enterprise cases have been provided for inclusion in this submission by Just for Kids Law³, a charity providing support, advice and representation to young people who find themselves in difficulty.

Murder:

9. 17 youths were charged with murder and conspiracy to commit grievous bodily harm (GBH). All 17 were seen on a bus travelling to an estate in Ealing; some were seen holding weapons, others with bandanas and hoods. The prosecution case was that this was an organised gang attack. A young man was killed on the estate and all 17 were charged with murder even though some had not been present when the victim was actually killed as when the group had arrived they had dispersed and different people had gone off in smaller groups. The position of the police was that all 17 on the bus had the intention to kill or cause grievous bodily harm. Although the police were aware that not all 17 youths were in the same place on the estate when the victim was killed, their position was that it was a joint enterprise.
10. Lawyers for some of the 17 successfully argued for the murder charge to be dismissed; they remained on a charge of conspiracy to commit GBH. The trial was split into two for logistical purposes. At the first trial all defendants were charged with murder and conspiracy to commit grievous bodily harm (GBH). At the conclusion of that case three were convicted of murder and all were convicted of conspiracy to commit GBH, including those that the prosecution could not prove were near the alleged incident at the time the young man was killed.
11. At the second trial, all the defendants were facing the charge of conspiracy to commit GBH; none of them were convicted of the charges.

Grievous bodily harm:

12. Two boys were stabbed outside a 24-hour food shop in Acton. Neither died but both were hospitalised. CCTV showed that one boy had stabbed both of the victims, however all his friends (five youths) were charged with two counts of grievous bodily harm (GBH) and violent disorder, the GBH on the basis of joint enterprise.
13. Our client's instructions were that he was out with some friends going to the shop when he bumped into the perpetrator who was an acquaintance. The perpetrator had asked if he could come to the shop with them - the boys all agreed. Outside the shop the perpetrator saw a young man with whom he had had a previous altercation. An argument broke out between the perpetrator and victim 1. One of

³ <http://www.justforkidslaw.org/>

victim 1's friends joined in and a fight began and punches were thrown. The perpetrator then pulled out a knife and stabbed victim 1. The group dispersed and the perpetrator chased one of the other boys, who stumbled and fell and was also stabbed.

14. Our client said that he had no idea that his acquaintance was carrying a knife when they bumped into him and had no idea he was carrying a knife until he stabbed victim 1.
15. All five boys were charged with the GBH on the basis of joint enterprise as the prosecution were aware, from the CCTV, that only one boy had actually stabbed both victims.

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